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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FCP/145675

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 1, 2012, under Wis. Admin. Code §DHS 10.55, to review a decision by Community Care Inc. (CCI) in regard to Medical Assistance (MA), specifically the Family Care Program (FCP), a hearing was held on January 29, 2013, at Racine, Wisconsin.

The issue for determination is whether CCI, as the Care Management Organization (CMO) for the FCP, properly reduced petitioner's supportive home care (SHC) hours and personal care (PC) hours and denied her request for meal preparation hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Jennifer Muraski, FCP Supv. and petitioner's former Case Mgr.  
Community Care Inc.  
6216 Washington Ave., Bldg. B, 2nd Floor  
Mt. Pleasant, Wisconsin 53406

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County. She is a participant in the FCP and lives alone in her own apartment. She is diagnosed with mild mental retardation (FSIQ=67), asthma, arthritis,

chronic headaches, dyslipidemia, fibromyalgia, gastritis, hypothyroidism, high blood pressure, and idiopathic tremors.

2. On September 25, 2012 the petitioner's Family Care Interdisciplinary Team (IDT) completed an annual review of petitioner's case. At that review, a Case Manager (CM) and Registered Nurse (RN) interviewed petitioner and assessed her needs using, in relevant part, the In-Home Assessment Tool (IHAT).
3. Based upon the review, petitioner's SHC hours were reduced from 5.7 hours to 3.1 hours per week and her PC hours were reduced from 1.3 hours to .8 hours per week.
4. On October 10, 2012 the agency issued a notice to petitioner advising her of that reduction. Exhibit 4. Of note, the agency stated, "Per our discussion of 10/9, it is neither cost effective or effective to continue providing the supportive home care/personal care hours at the level authorized in the past based on: the actual scheduled visits made by the aides, frequency that tasks are completed, member reported task elimination (shaving, sweeping/mopping floors), member's report of time needed for tasks, and her ability. Team will purchase a shopping cart to promote her independence in shopping and laundry. Stacey's goals of continuing to live independently in her apartment, to increase personal independence, to lose weight by walking, and to find recipes for herself by surfing the web would be compromised if she received more assistance than she needed as it would make her more reliant on others."
5. At some point thereafter, petitioner filed an appeal with her Care Management Organization (CMO) Grievance and Appeal Committee, and a hearing was held on November 20, 2012. The CMO Grievance and Appeal Committee's decision upheld the IDT's determination regarding the reduction in hours.

### **DISCUSSION**

The Family Care Program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care Program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction and service denial is sought here, the petitioner appropriately sought a fair hearing for a further, *de novo* review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the FCP reads as follows:

#### **DHS 10.41 Family care services . . .**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services *are cost-effective and meet the needs of enrollees* as identified through the individual assessment and service plan.

**Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an**

**intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.**

Wis. Admin. Code §DHS 10.41(2)(*emphasis added*). Supportive home care and personal care services are included in the list of covered services in the statutory note above. The Department's 2012 CMO contracts may be viewed at <http://www.dhs.wisconsin.gov/lcure/StateFedReqs/FC-RC-CMO-Contracts.htm>. Having established that SHC and PC hours can be covered services, the question that remains is, how many hours are essential to meeting the petitioner's needs?

The agency has developed the IHAT as a tool to allow case managers to consistently determine the number of hours required by each recipient. The IHAT allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool's calculations. The reviewer in this case, after meeting with petitioner and assessing her capabilities, used the tool to determine the reduction. See also Exhibit 1 vs. Exhibit 2.

The reduction of hours that petitioner disputes relates to assistance in the shower (washing hair and back), assistance with laundry, and assistance with grocery shopping. During the annual assessment, petitioner advised the IDT that her aides were only coming to her home 3 times per week, not the 4 times per week authorized under the previous IHAT. See Exhibit 1. The IDT reported that petitioner then told them that this service frequency was meeting her needs, and there is no evidence that petitioner ever previously complained that the 3 times per week services were not meeting her needs. Petitioner had also told the IDT that she only needed 5 minutes for assistance with the washing of her hair and back, and therefore the agency reduced the time from 7 minutes to 5 minutes and reduced the service frequency from 4 times per week to 3 times per week accordingly. There is no evidence to show why the allotted 5 minutes is inadequate to meet those needs beyond petitioner's generic assertion that more time is needed. The petitioner had a friend testify at hearing about complaints of odor regarding petitioner, presumably to suggest that 3 times per week for showering was insufficient. This is new information not presented to the IDT at the time of the assessment, and contradicts the information that the petitioner gave the team. I cannot find that the agency made an incorrect determination based on the information provided to it at the time of the assessment.

As to the reduction for assistance with laundry, the IDT had previously allotted 120 minutes every week for offsite laundry. Petitioner had reported that she could do her own laundry, but needed assistance with organizing, folding larger items, and hanging up her clothes. Petitioner's preference was an offsite laundromat (approx. 1/2 mile from her home) because it was cheaper and less time consuming for her. Once again, even though she was authorized to receive those services every week, the aides were only coming every other week. I note that the IDT met with her in December, at which time the petitioner reported that she was using the shopping cart for her laundry and it was working well. Because those services were being provided at that frequency and because petitioner has laundry on-site at her apartment complex, the IDT determined that she could use the grocery cart it had purchased for her to carry loads to and from her apartment or she could use the washer/dryer on her apartment floor every other week. At hearing, petitioner testified that the shopping cart was not always useful due to her arm weakness. The IDT responded that it did not have that information, nor the information that petitioner was beginning physical therapy (PT) relating to her arm weakness. Again, this is new information not presented to the IDT at the time of the assessment, and contradicts the information that the petitioner gave the team. I also do not find that the petitioner has rebutted the reduction for a laundromat away from her apartment's facilities because it is cheaper for her. I do not find that the agency made an incorrect determination based on the information provided to it at the time of the assessment.

Regarding the reduction for grocery shopping, the IDT determined that once again, even though she was authorized to receive those services for 120 minutes every week, the aides were only coming every other week because of the distance to the grocery store that petitioner prefers. Petitioner prefers shopping at an Aldi's in Sturtevant (distance travelled there is not in the record) rather than the Piggly Wiggly (PW) located ½ mile from her home because the Aldi's is cheaper for her. The IDT purchased a grocery cart for petitioner, with her agreement, so that she could use the cart to go to the PW on the week that she does not have an aide to help her. The IDT also found that the use of the cart would facilitate petitioner's goal to lose weight by walking. Petitioner does get out into the community and can use the bus without trouble. The PW is close to that bus stop. Petitioner claims that she needs to shop weekly due to her dietary needs for fresh fruits and vegetables. Yet, she only prefers to do that shopping at an Aldi's due to cost. Regardless, as both a cost saving measure to the FCP, and as an activity that would promote petitioner's goals for losing weight, eating more fruits and vegetables, and increasing her personal independence, I find that the IDT's decision to authorize a shopping cart for petitioner to do her shopping at the PW was based on the correct information it had at the time. See again, Wis. Admin. Code §DHS 10.41(2).

Finally, the last major issue was for petitioner's request to add in SHC for meal preparation. The IDT relied on an occupational therapist's notes from her OT therapy, which according to the IDT, showed that petitioner could make a variety of meals, use a microwave and make a sandwich, for examples. See Exhibit 3. Petitioner's version of the OT showed limitations in her abilities. The petitioner and her advocates at hearing now suggest that petitioner is unsafe in her home if she is left alone to cook. I think the IDT's response to have a rehabilitation specialist follow up with her on the cooking issues - being afraid to drop things, dealing with hot foods, cutting food - was a wise one. Unfortunately, petitioner refused it. Regardless, the evidence does not support a finding that the CMO erred in denying the request for meal preparation hours based on the information it had at that time.

Based on the preponderance of the evidence, I conclude that the result of the SHC/PC determination is justified and I do not find reason to increase the hours beyond the hours now approved. This is not to diminish the services she receives or that petitioner requires them, however, I cannot find that the agency made an incorrect determination based on the information provided to it at the time of the assessment. The information provided at the assessment showed that petitioner was far more competent and having her needs met with the services she was receiving. The petitioner and her advocates at hearing now suggest that petitioner is malodorous, unsafe to cook in her home, and weaker than previously acknowledged. It appears that the IDT has not had all of the information it needs from petitioner, therefore I would suggest that either she get a representative to help her, or keep the IDT apprised of her conditions, including that she is receiving PT services. It appears that this is an individual who is doing well and wants more independence, but might not be ready for the change that occurs when working to meet that goal. This new information should be presented to the IDT through another assessment so that the IDT can truly understand and evaluate what services petitioner needs. Finally, I am still unclear as to why the aides were coming less time than what they were allotted under the "old IHAT", and why *they* made the decision to come less. It appears a full conversation with all of the petitioner's service providers needs to be had here.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

The agency properly reduced petitioner's S HC hours and PC hours and denied the request for hours for meal preparation.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

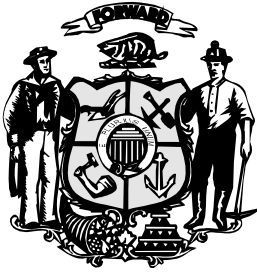
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of February, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 14, 2013.

Community Care Inc.  
Office of Family Care Expansion